

## SENATE BILL NO. 305

INTRODUCED BY TUTVEDT, JACKSON, LAIBLE, LAKE, STAHL, STOKER

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING AND CLARIFYING ASPECTS OF THE MONTANA SUBDIVISION AND PLATTING ACT; ~~REMOVING DUPLICATIVE AND AMBIGUOUS LANGUAGE; CLARIFYING EVIDENTIARY STANDARDS FOR MITIGATION AND DENIAL; CLARIFYING THE APPLICATION AND REVIEW PROCEDURE, INCLUDING PROVIDING CONSEQUENCES FOR FAILURE TO COMPLY WITH ESTABLISHED SUBDIVISION REVIEW~~ TIMELINES; GENERALLY INCREASING THE PREDICTABILITY OF THE SUBDIVISION REVIEW PROCESS; AMENDING SECTIONS ~~76-3-501, 76-3-504, 76-3-510, 76-3-604, 76-3-608, 76-3-615, 76-3-620, 76-3-625,~~ 76-3-510, 76-3-604, 76-3-608, AND 76-4-125, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the Montana Subdivision and Platting Act (the Act) is designed to balance the rights of landowners with public health, safety, and general welfare; and

WHEREAS, if the Act is not clear and predictable, neither landowners nor the public health, safety, and general welfare can be effectively protected; and

WHEREAS, land use regulations should be designed to permit and promote economic growth in the state; and

WHEREAS, certain provisions of the Act have proven over time to be unclear and to promote unpredictability in the process; and

WHEREAS, it is believed that these modifications will promote clarity, efficiency, predictability, and increased public participation in the process.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

**Section 1.** Section 76-3-510, MCA, is amended to read:

**"76-3-510. Payment for extension of capital facilities.** (1) A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and

1 safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision.  
2 The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local  
3 government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing  
4 or extending capital facilities related to education.

5 (2) All fees, costs, or other money paid by a subdivider under this section must be expended on the  
6 capital facilities for which the payments were required."

7  
8 **Section 2.** Section 76-3-604, MCA, is amended to read:

9 **"76-3-604. Review of subdivision application -- review for required elements and sufficiency of**  
10 **information.** (1) (a) Within 5 working days of receipt of a subdivision application submitted in accordance with  
11 any deadlines established pursuant to 76-3-504(3) and receipt of the review fee submitted as provided in  
12 76-3-602, the reviewing agent or agency shall determine whether the application contains all of the listed  
13 materials as required by 76-3-504(1)(a) and shall notify the subdivider or, with the subdivider's written permission,  
14 the subdivider's agent of the reviewing agent's or agency's determination.

15 (b) If the reviewing agent or agency determines that elements are missing from the application, the  
16 reviewing agent or agency shall identify those elements in the notification.

17 (2) (a) Within 15 working days after the reviewing agent or agency notifies the subdivider or the  
18 subdivider's agent that the application contains all of the required elements as provided in subsection (1), the  
19 reviewing agent or agency shall determine whether the application and required elements contain detailed,  
20 supporting information that is sufficient to allow for the review of the proposed subdivision under the provisions  
21 of this chapter and the local regulations adopted pursuant to this chapter and shall notify the subdivider or, with  
22 the subdivider's written permission, the subdivider's agent of the reviewing agent's or agency's determination.

23 (b) If the reviewing agent or agency determines that information in the application is not sufficient to allow  
24 for review of the proposed subdivision, the reviewing agent or agency shall identify the insufficient information  
25 in its notification.

26 (c) A determination that an application contains sufficient information for review as provided in this  
27 subsection (2) does not ensure that the proposed subdivision will be approved or conditionally approved by the  
28 governing body and does not limit the ability of the reviewing agent or agency or the governing body to request  
29 additional information during the review process.

30 (3) The time limits provided in subsections (1) and (2) apply to each submittal of the application until:

1 (a) a determination is made that the application contains the required elements and sufficient information;

2 and

3 (b) the subdivider or the subdivider's agent is notified.

4 (4) After the reviewing agent or agency has notified the subdivider or the subdivider's agent that an  
5 application contains sufficient information as provided in subsection (2), the governing body shall approve,  
6 conditionally approve, or deny the proposed subdivision within 60 working days OR 120 WORKING DAYS IF THE  
7 PROPOSED SUBDIVISION CONTAINS 50 OR MORE LOTS, based on its determination of whether the application conforms  
8 to the provisions of this chapter and to the local regulations adopted pursuant to this chapter, unless:

9 (a) the subdivider and the reviewing agent or agency agree to an extension or suspension of the review  
10 period, not to exceed 1 year; or

11 (b) a subsequent public hearing is scheduled and held as provided in 76-3-615.

12 (5) (A) If the governing body fails to comply with the time limits under this section SUBSECTION (4), the  
13 governing body shall pay to the subdivider a financial penalty of \$50 per lot per month or a pro rata portion of a  
14 month, not to exceed the total amount of the subdivision review fee collected by the governing body for the  
15 subdivision application, until the governing body denies, approves, or conditionally approves the subdivision.

16 (B) THE PROVISIONS OF SUBSECTION (5)(A) DO NOT APPLY IF THE REVIEW PERIOD IS EXTENDED OR SUSPENDED  
17 PURSUANT TO SUBSECTION (4).

18 ~~(5)(6)~~ If the governing body denies or conditionally approves the proposed subdivision, it shall send the  
19 subdivider a letter, with the appropriate signature, that complies with the provisions of 76-3-620.

20 ~~(6)(7)~~ (a) The governing body shall collect public comment submitted at a hearing or hearings regarding  
21 the information presented pursuant to 76-3-622 and shall make any comments submitted or a summary of the  
22 comments submitted available to the subdivider within 30 days after conditional approval or approval of the  
23 subdivision application and preliminary plat.

24 (b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the  
25 comments or the summary provided by the governing body to the:

26 (i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more  
27 parcels containing less than 20 acres; and

28 (ii) local health department or board of health for proposed subdivisions that will create one or more  
29 parcels containing 20 acres or more and less than 160 acres.

30 ~~(7)(8)~~ (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres,

the governing body may require approval by the department of environmental quality as a condition of approval of the final plat.

(b) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to 76-3-622, that there is an adequate water source and at least one area for a septic system and a replacement drainfield for each lot.

~~(8)(9)~~ (a) Review and approval, conditional approval, or denial of a proposed subdivision under this chapter may occur only under those regulations in effect at the time a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the review periods provided in subsections (1) and (2), the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

~~SECTION 3. SECTION 76-3-608, MCA, IS AMENDED TO READ:~~

~~"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services:~~

~~(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable:~~

~~(3) A subdivision proposal must undergo review for the following primary criteria:~~

~~(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;~~

~~(b) compliance with:~~

~~(i) the survey requirements provided for in part 4 of this chapter;~~

~~(ii) the local subdivision regulations provided for in part 5 of this chapter; and~~

1       ~~—— (iii) the local subdivision review procedure provided for in this part;~~  
2       ~~—— (c) the provision of easements for the location and installation of any planned utilities; and~~  
3       ~~—— (d) the provision of legal and physical access to each parcel within the proposed subdivision and the~~  
4       ~~required notation of that access on the applicable plat and any instrument of transfer concerning the parcel; and~~  
5       ~~—— (e) an analysis of the agricultural soil type and whether the soil type is suitable to support structures.~~  
6       ~~—— (4) The governing body may require the subdivider to design the proposed subdivision to reasonably~~  
7       ~~minimize potentially significant adverse impacts identified through the review required under subsection (3). The~~  
8       ~~governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).~~  
9       ~~—— (5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under~~  
10       ~~subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is~~  
11       ~~recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and~~  
12       ~~will preclude approval of the subdivision.~~  
13       ~~—— (b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider~~  
14       ~~and shall give due weight and consideration to the expressed preference of the subdivider.~~  
15       ~~—— (6) The governing body may exempt proposed subdivisions that are entirely within the boundaries of~~  
16       ~~designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have~~  
17       ~~been met:~~  
18       ~~—— (a) the governing body has adopted a growth policy pursuant to chapter 1 that:~~  
19       ~~—— (i) addresses the criteria in subsection (3)(a);~~  
20       ~~—— (ii) evaluates the impact of development on the criteria in subsection (3)(a);~~  
21       ~~—— (iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and~~  
22       ~~—— (iv) identifies one or more geographic areas where the governing body intends to authorize an exemption~~  
23       ~~from review of the criteria in subsection (3)(a); and~~  
24       ~~—— (b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:~~  
25       ~~—— (i) apply to the entire area subject to the exemption; and~~  
26       ~~—— (ii) address the criteria in subsection (3)(a), as described in the growth policy.~~  
27       ~~—— (7) A governing body may conditionally approve or deny a proposed subdivision as a result of the water~~  
28       ~~and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on~~  
29       ~~the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing~~  
30       ~~subdivision, zoning, or other regulations that the governing body has the authority to enforce."~~

1  
2       **Section 3.** Section 76-4-125, MCA, is amended to read:

3       **"76-4-125. Review of subdivision application -- land divisions excluded from review.** (1) Except  
4 as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing  
5 authority. The review by the reviewing authority must be as follows:

6       (a) At any time after the developer has submitted an application under the Montana Subdivision and  
7 Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must  
8 include preliminary plans and specifications for the proposed development, whatever information the developer  
9 feels necessary for its subsequent review, any public comments or summaries of public comments collected as  
10 provided in 76-3-604~~(6)~~(7), and information required by the reviewing authority. Subdivision fees assessed by  
11 the reviewing authority must accompany the application. If the proposed development includes onsite sewage  
12 disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting  
13 the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to  
14 determine whether the site meets applicable state and local requirements.

15       (b) Except as provided in 75-1-205(4) and 75-1-208(4)(b), the department shall make a final decision  
16 on the proposed subdivision within 60 days after the submission of a complete application and payment of fees  
17 to the reviewing authority unless an environmental impact statement is required, at which time this deadline may  
18 be increased to 120 days. The reviewing authority may not request additional information for the purpose of  
19 extending the time allowed for a review and final decision on the proposed subdivision. If the department  
20 approves the subdivision, the department shall issue a certificate of subdivision approval indicating that it has  
21 approved the plans and specifications and that the subdivision is not subject to a sanitary restriction.

22       (2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to  
23 the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade  
24 the provisions of this part, are not subject to review:

25       (a) the exclusions cited in 76-3-201 and 76-3-204;

26       (b) divisions made for the purpose of acquiring additional land to become part of an approved parcel,  
27 provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and  
28 that the division does not fall within a previously platted or approved subdivision;

29       (c) divisions made for purposes other than the construction of water supply or sewage and solid waste  
30 disposal facilities as the department specifies by rule;

(d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127, that adequate storm water drainage and adequate municipal facilities will be provided; and

(e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating a parcel from the tract for purposes of transfer if:

(i) the remainder is served by a public or multiple-user sewage system approved before January 1, 1997, pursuant to local regulations or this chapter; or

(ii) the remainder is 1 acre or larger and has an individual sewage system serving a discharge source that was in existence prior to April 29, 1993, and, if required when installed, the system was approved pursuant to local regulations or this chapter.

(3) Consistent with the applicable provisions of 50-2-116, a local health officer may require that, prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features sufficient to accommodate a replacement drainfield."

**NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

- END -